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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,164	08/18/2005	Clark D. Klein Jr	BASF.10025	8330
45473 7590 09/14/2007 HUTCHISON LAW GROUP PLLC PO BOX 31686 RALEIGH, NC 27612			EXAMINER HOLMAN, JOHN D	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 09/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/532,164

Applicant(s)

KLEIN JR ET AL.

Examiner

John D. Holman

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/20/2005</u>   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-8, 10, 11, and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rollins (US 20020148157).

Regarding claim 1, Rollins discloses a device comprising a housing (12) configured as a landscape element defining a cavity having an opening (22) to the cavity and adapted to engage the upper ground surface, a perforated bait cartridge (88), a bait material disposed within the cartridge (88), a mesh-like member (14) operably engaged with the housing (12) covering the opening (22) and adapted to allow termites to pass through into the cavity, and an inspection hatch (24) operably engaged with the housing (12) and configured to allow visual inspection of the bait cartridge (88) within the cavity from outside the housing (12) without removing the housing (12) from engagement with the upper ground. See Rollins figure 1 and 8.

Regarding claim 3, Rollins discloses a device wherein at least one of the bait cartridge (88), the cavity, and the mesh-like member (14) are configured to become increasingly visible through the inspection hatch (24) at the bait material is consumed. See Rollins figure 1 and 8.

Regarding claim 4, Rollins discloses a device comprising an anchor member (98) operably engaged with the housing (12) and adapted to secure the housing (12) in engagement with the upper ground. See Rollins figure 1.

Regarding claim 5, Rollins discloses a device wherein the housing (12), the mesh-like member (14), the bait cartridge (88), and the bait material are configured to cooperate to allow the bait material to contact the upper ground surface when the housing is in engagement with the upper ground surface. See Rollins figure 1 and 8.

Regarding claim 6, Rollins discloses a device wherein the bait material is configured to be self-wicking. See Rollins paragraph 47. Rollins discloses that water may be mixed with various other bait material, which provided for the bait material to be self-wicking.

Regarding claim 7, Rollins discloses a device comprising a water reservoir disposed with the housing in operable engagement with the bait material and configured to provide continuous wetting. See Rollins paragraph 47. Rollins discloses that water may be mixed with various other bait material, providing for the bait material to become a water reservoir itself.

Regarding claim 8, Rollins discloses a device wherein the housing comprising a first portion (68) contacting the ground surface, and a second portion (44) cooperating with the first portion to define a cavity, wherein the first portion and the second portion are separately engaged. See Rollins figure 1 and 2.

Regarding claim 10, Rollins discloses a method comprising engaging a housing (12) configured as a landscape element defining a cavity having an opening (22) to the

cavity and adapted to engage the upper ground surface, a perforated bait cartridge (88), a bait material disposed within the cartridge (88), a mesh-like member (14) operably engaged with the housing (12) covering the opening (22) and adapted to allow termites to pass through into the cavity, and an inspection hatch (24) operably engaged with the housing (12) and configured to allow visual inspection of the bait cartridge (88) within the cavity from outside the housing (12) without removing the housing (12) from engagement with the upper ground, and wherein at least one of the bait cartridge (88), the cavity, and the mesh-like member (14) are configured to become increasingly visible through the inspection hatch (24) as the bait material is consumed. See Rollins figure 1 and 8.

Regarding claim 11, Rollins discloses a method comprising securing an anchor member (98) operably engaged with the housing (12) and adapted to secure the housing (12) in engagement with the upper ground. See Rollins figure 1.

Regarding claim 13, Rollins discloses a method wherein the bait material is in contact with the upper ground surface through the bait cartridge (88) and the mesh-like member (14). See Rollins figure 1.

Regarding claim 14, Rollins discloses a method comprising continuously wetting the bait material with a water reservoir. See paragraph 47. Rollins discloses that water may be mixed with the bait material, providing for a water reservoir that would allow the bait material to be continuously wetted.

Regarding claim 15, Rollins discloses a method comprising reporting a termite presence to a central station. See Rollins paragraph 57, 59, and 62.

Regarding claim 16, Rollins discloses a method comprising dispatching a pest control professional to the site in response to the termite presence reported to the central station. See Rollins paragraph 57, 59, and 62. Rollins discloses that a pest control professional (operator) monitors the bases periodically. If the base contains the evidence that termites are present the operator returns to the bait at a later date to re-inspect. The data from an infested base is reported to a central station and that data is used to determine whether or not to inspect the station again.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rollins (US 20020148157) in view of Brode, III et al. (US 20030124166).

Claims 2 and 12 differ from Rollins in calling for the inspection hatch to be opaque. Brode, III et al. discloses a termite device wherein the inspection hatch is opaque. See Brode paragraph 94. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Rollins in view of the teachings of Brode to include the inspection hatch to be opaque for the purpose of preventing degradation of the contents of the housing by the effects of the sun.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rollins (US 20020148157) in view of Lund (US 6474015).

Claim 9 differs from Rollins in calling for the first portion to be connected to the second portion by a hinge. Lund discloses a termite device wherein the second portion (20) is connected to the first portion (30) by a hinge (31). See Lund figure 2. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Rollins in view of the teachings of Lund to include the first portion connected to the second portion by a hinge for the purpose of maintaining the entire assembly in tact and preventing the parts from being displaced from each other.

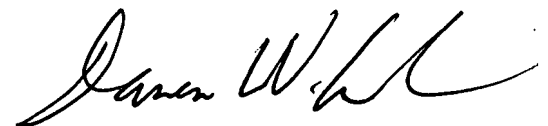
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Holman whose telephone number is 571 272-2754. The examiner can normally be reached on Monday through Friday 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JDH

A handwritten signature in black ink, appearing to read "Darren W. Ark", with a stylized flourish at the end.

**DARREN W. ARK**  
**PRIMARY EXAMINER**